



DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740
FAX: (808) 270-7152

March 28, 2005

Public Utilities Commission
State of Hawaii
465 South King St., Rm. 103
Honolulu, HI 96813

PUBLIC UTILITIES
COMMISSION

MAR 30 12 13 PM '05

FILED

ATTENTION: Chief Clerk of the Commission

Re: In the matter of PUBLIC UTILITIES COMMISSION Instituting
a Proceeding to Investigate Distributed Generation In
Hawaii; Docket No. 03-0371

Dear Chief Clerk of the Commission:

Enclosed for filing are the original and 12 copies of
COUNTY OF MAUI'S REPLY BRIEF; CERTIFICATE OF SERVICE.

Please return the two (2) additional file-marked copies to
this office. A self-addressed, stamped, envelope is enclosed for
your convenience.

If you have any questions, please do not hesitate to contact
me.

Sincerely,

Kay A. Ogunawan
CINDY Y. YOUNG

Deputy Corporation Counsel

CYY:ko
Enclosures

S:\CLERICAL\KAO\PUC\Ltr\puc.03-0371.wpd

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Distributed)
Generation in Hawaii.)
_____)

DOCKET NO. 03-0371

PUBLIC UTILITIES
COMMISSION

MAR 30 12:14 PM '05

FILED

COUNTY OF MAUI'S REPLY BRIEF

CERTIFICATE OF SERVICE

DEPARTMENT OF THE CORPORATION COUNSEL 205

BRIAN T. MOTO 5421-0
Corporation Counsel
CINDY Y. YOUNG 7443-0
Deputy Corporation Counsel
County of Maui
200 S. High Street
Wailuku, Maui, Hawaii 96793
Telephone: (808) 270-7740
Attorneys for Intervenor
COUNTY OF MAUI

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	
)	
PUBLIC UTILITIES COMMISSION)	
)	DOCKET NO. 03-0371
Instituting a Proceeding to)	
Investigate Distributed)	
Generation in Hawaii.)	
<hr/>)	

COUNTY OF MAUI'S REPLY BRIEF

I. "Partially Regulated Competition Market Model" Is Undesirable.

HECO, MECO, and HELCO (collectively "HECO") propose, and the Division of Consumer Advocacy ("CA") supports, regulating the prices and services for privately used, demand-side distributed generation ("DG") services provided by HECO. However, the same services by non-utility companies would not be regulated. HECO's proposed regulated combined heat and power ("CHP") services would compete in the CHP marketplace against the unregulated CHP services offered by energy manufacturers and energy service companies. This "partially regulated competition market model" approach contrasts with the "structured competition market model" approach, proposed by the Hawaii Renewable Energy Alliance ("HREA"), which promotes unregulated competition between HECO and other energy companies.

HECO and the CA support the partially regulated competition market model because they agree that HECO's regulated CHP services

proposal best protects the interests of HECO's CHP ratepayers, non-CHP ratepayers, and shareholders against the market share threat from unregulated CHP DG. The County of Maui ("COM") has discussed the flawed arguments made by HECO in support of the partially regulated competition market model in its previous submittals. However, assuming arguendo that the arguments by HECO and the CA are valid, the partially regulated competition market model is undesirable for the following reasons.

A. The Price Of Privately Used DG Should Not Be Regulated.

As stated in our previous filings, the COM does not support regulating the price of any privately used, demand-side distributed energy resources ("DER") service, including demand-side DG services. Regulating the price of any privately used, demand-side DG or other DER services is unprecedented and no substantial reasons have been set forth which support such a change.

B. No Justification To Exclude Non-Utility Providers From Regulation.

HECO and the CA do not provide any justification why the Commission should not regulate non-utility providers who offer the same CHP systems as proposed by HECO. If the Commission determines that HRS Chapter 269 applies to HECO's proposed CHP application, the Commission should apply the provisions of HRS Chapter 269 equally to all CHP providers. Further, if ratepayers protect HECO's shareholders from reasonable CHP business losses, as HECO

proposes, all other CHP providers should be granted the same protection if they are required, or opt, to be regulated.

C. DG Demand-Side Management Has Not Been Considered

HECO and the CA contend that HECO's partially regulated competition market model approach will allow HECO to plan and implement DG at the lowest reasonable cost, in the context of HECO's integrated resource planning ("IRP") process. This cannot take place until HECO considers DG DSM in its IRP process. A DG DSM assessment(s) needs to be made before proceeding with HECO's propose CHP program or other regulated utility demand-side DER service proposals in order to determine if HECO's approach is the lowest reasonable cost option in the first place. COM believes that non-utility owned DG DSM services will be more cost effective than utility owned demand-side DG services because it is cheaper to obtain reliable utility services via customer incentives than it is via owning the DG facility itself, as is the case with ice storage air conditioning services and other DER DSM services.

D. HECO's Partially Regulated Competition Market Model Approach Is Not Robust For All DG and DER.

HECO's partially regulated competition market model is intended to protect the interests of HECO's CHP ratepayers, non-CHP ratepayers, and shareholders against the market share competition from unregulated CHP DG. However, for this market model to be successful, HECO must dominate its unregulated competitors in the

CHP market, as the forecasts in their CHP application indicate. We addressed in detail the significant risks associated with this business venture in our Final Brief and other filings.

HECO focuses on the CHP market and does not demonstrate how the partially regulated competition market model would accommodate other DG and DER. There are several emerging technologies that could take significant market share away from HECO, such as photovoltaic roofing materials and plug-in hybrid electric vehicles in a vehicle to grid application.¹ HECO's partially regulated competition market model would not be able to address the market share competition from these DG services because HECO would have difficulty in establishing a dominant market position in these established market sectors. The partially regulated competition market model approach is inadequate to deal with current and future DG and DER markets, and therefore, should not be approved.

II. HREA's Structured Competition Market Model.

In testimony, the COM expressed concerns over the cost to regulate a utility affiliate company involved in selling and owning DG systems. However, the COM supports HREA's structured competition market model, should the Commission wish to pursue a mechanism to allow utility participation in the privately used, demand-side DG market. This recommended structured competition

¹ See COM-T-1, pages 4-5.

market model is in addition to our recommendation to require HECO to assess DG DSM services by non-utility companies.

The structured competition market model is consistent with precedents in Hawaii and other states. The following CA statement supports the structured competition market model:

Current examples of a utility providing service to a non-regulated entity using utility resources or when a utility receives service from a non-regulated entity are the Gas Company using the same resources to provide the regulated gas and non-regulated bottled gas service, the local incumbent telephone company uses the same resources to provide regulated and non-regulated services, and similarly, HECO using the same resources to provide service to both the utility and Non-Utility operations of its parent, HEI. In all of the above situations, there are rules and reporting requirements that assist the regulatory agencies (i.e., the Commission and the Consumer Advocate) in determining whether cross-subsidization of the non-regulated operations by the regulated operations is occurring.²

III. Conclusion

HECO and the CA focus their attention on the CHP market that is currently threatening HECO's market share. This narrow focus obscures the problems from the future competition from other emerging DG and DER services. HECO's partially regulated competition market model approach fails to address the long term interests of all ratepayers and HECO's shareholders from all DG and DER market competition.

² CA Post Hearing Brief, pages 11-12.

Several emerging DG and DER services have the potential to take significant market share away from HECO. The viability of HECO's partially regulated competition market model requires HECO to be successfully dominant in all competitive DG markets in order to earn enough revenues to protect all of its ratepayers and shareholders from the lost revenues due to unregulated competitors. This partially regulated competition market model is unrealistic and flawed.

COM recommends three primary actions by the Commission to address the market erosion concerns of HECO and the CA. First, the Commission should implement HREA's structured competition market model to allow HECO to compete in the unregulated DG marketplace against other unregulated competitors. This will allow an unregulated HECO affiliate company to compete and possibly earn revenues for HECO's parent company, HEI. Second, the Commission should address the systemic problems associated with Hawaii's outdated regulatory structure. This can only be accomplished by restructuring HECO's profitability away from electricity sales to performance-based measures and by restructuring rate and fee designs, as recommended by the COM, to send price signals to consumers that properly reflect current and expected energy market conditions and reflect governmental energy, security, and environmental objectives. Third, the IRP process must be improved

to develop DG DSM programs that are beneficial to all ratepayers and shareholders.

DATED: Wailuku, Maui, Hawaii, March 28, 2005.

BRIAN T. MOTO
Corporation Counsel
Attorney for Intervenor
COUNTY OF MAUI

By 
CINDY Y. YOUNG
Deputy Corporation Counsel

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were duly served upon the following by electronic mail and by United States mail, postage prepaid, on March 28, 2005, addressed as follows:

DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
335 Merchant St., Rm. 326
Honolulu, HI 96813
3 copies

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
Goodsill, Anderson, Quinn & Stifel
Alii Place, Ste. 1800
1099 Alakea St.
Honolulu, HI 96813
Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC.
MAUI ELECTRIC COMPANY, LIMITED
1 copy

WILLIAM A. BONNET, Vice-President
Hawaiian Electric Company, Inc.
Hawaii Electric Light Company, Inc.
Maui Electric Company, Limited
P.O. Box 2750
Honolulu, HI 96840-0001
1 copy

PATSY H. NANBU
Hawaiian Electric Company, Inc.
P.O. Box 2750
Honolulu, HI 96840-0001
1 copy

ALAN M. OSHIMA, ESQ.
KENT D. MORIHARA, ESQ.
Oshima, Chun, Fong & Chung LLP
Davies Pacific Center
841 Bishop St., Ste. 400
Honolulu, HI 96813
Attorneys for
KAUAI ISLAND UTILITY COOPERATIVE
2 copies

ALTON MIYAMOTO President & CEO Kauai Island Utility Cooperative 4463 Pahe'e St. Lihue, HI 96766	1 copy
WARREN S. BOLLMEIER, II, President Hawaii Renewable Energy Alliance 46-040 Konane Pl., #3816 Kaneohe, HI 96744	1 copy
JOHN CROUCH Box 38-4276 Waikoloa, HI 96738	1 copy
RICK REED Inter Island Solar Supply 761 Ahua St. Honolulu, HI 96819	1 copy
HENRY Q. CURTIS Vice President for Consumer Issues Life of the Land 76 North King St., Ste. #203 Honolulu, Hawaii 96817	3 copies
SANDRA-ANN Y.H. WONG, ESQ. 1050 Bishop St., #514 Honolulu, HI 96813 Attorney for HESS MICROGEN, LLC	1 copy
CHRISTOPHER S. COLMAN, ESQ. Deputy General Counsel Amerada Hess Corporation One Hess Plaza Woodbridge, NJ 07095	1 copy
MICHAEL DE'MARSI Hess Microgen 4101 Halburton Rd. Raleigh, NC 27614	1 copy

LANI D.H. NAKAZAWA
County Attorney
CHRISTIANE L. NAKA-TRESLER
Deputy County Attorney
Office of the County Attorney
County of Kauai
4444 Rice St., Ste. 220
Lihue, HI 96766-6315
Attorneys for COUNTY OF KAUAI

2 copies

GLENN SATO, Energy Coordinator
c/o Office of the County Attorney
County of Kauai
4444 Rice St., Ste. 220
Lihue, HI 96766

1 copy

DATED: Wailuku, Maui, Hawaii, March 28, 2005.

BRIAN T. MOTO
Corporation Counsel
Attorney for Intervenor
COUNTY OF MAUI

By Cindy Y. Young
CINDY Y. YOUNG
Deputy Corporation Counsel